

NATIONAL DEFENSE UNIVERSITY
NATIONAL WAR COLLEGE

96-E-47

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THE BUSH ADMINISTRATION'S POLICY ON HAITIAN MIGRATION
Course 3 The National Security Policy Process

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18 December 1995

| Report Documentation Page | | | | Form Approved OMB No. 0704-0188 | |
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| Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. | | | | | |
| 1. REPORT DATE 1996 | | 2. REPORT TYPE | | 3. DATES COVERED 00-00-1996 to 00-00-1996 | |
| 4. TITLE AND SUBTITLE The Bush Administration's Policy on Haitian Migration | | | | 5a. CONTRACT NUMBER | |
| | | | | 5b. GRANT NUMBER | |
| | | | | 5c. PROGRAM ELEMENT NUMBER | |
| 6. AUTHOR(S) | | | | 5d. PROJECT NUMBER | |
| | | | | 5e. TASK NUMBER | |
| | | | | 5f. WORK UNIT NUMBER | |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) National War College, 300 5th Avenue, Fort Lesley J. McNair, Washington, DC, 20319-6000 | | | | 8. PERFORMING ORGANIZATION REPORT NUMBER | |
| 9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) | | | | 10. SPONSOR/MONITOR'S ACRONYM(S) | |
| | | | | 11. SPONSOR/MONITOR'S REPORT NUMBER(S) | |
| 12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited | | | | | |
| 13. SUPPLEMENTARY NOTES | | | | | |
| 14. ABSTRACT see report | | | | | |
| 15. SUBJECT TERMS | | | | | |
| 16. SECURITY CLASSIFICATION OF: | | | 17. LIMITATION OF ABSTRACT | 18. NUMBER OF PAGES 12 | 19a. NAME OF RESPONSIBLE PERSON |
| a. REPORT unclassified | b. ABSTRACT unclassified | c. THIS PAGE unclassified | | | |

BACKGROUND

On September 30, 1991 President Aristide of Haiti was overthrown by a Haitian Army, enlisted-led coup. Through intervention by the diplomatic community in Haiti (notably the French and U.S. Ambassador), Aristide was allowed to leave for exile, setting up a long-running crisis that spanned both the latter half of the Bush Administration and part of the Clinton Administration's tenure. The purpose of this paper is concentrate on the Bush policy on Haiti. Of specific interest is the policy toward Haitian illegal immigration and the bureaucratic process that drove this policy. This process was evolutionary in nature and resulted in the issuance of three Executive Orders, the involvement of Congress, the U.S. Federal Court System (including the Supreme Court), pressure from the media and pressure from Haitian human rights groups. Although the Haitian policy process was cumbersome and cautious, the main goals throughout the Bush administration remained constant: support the return of democracy to Haiti and control illegal immigration. These goals did not change and as the crisis dragged on into an election year, the illegal immigration component became critical. The Bush administration did not want to face domestic political pressure on the immigration question. Additionally, two assumptions made at the outset of the policy process flawed its execution: the crisis would be short-lived and few Haitians would attempt to reach the U.S. as a result of the coup against Aristide.

THE COUP AND U.S./OAS REACTION

Aristide won what has been described as the first truly democratic election in Haiti's history, with 67% of the vote in December 1990. U.S. and Organization of American States (OAS) interest in the electoral process was intense and included international monitors (including ex-President Carter) being sent to Haiti during the election. Following Aristide's inauguration in February 1991, tension began to build between the President, the Haitian elites and the Army. Aristide, although democratically elected, was not free from advocating violent means to be taken against the Haitian elites and Army, resulting in numerous incidents of mob violence through the first nine months of 1991.

The Haitian Army, along with the Catholic Church, represented the most stable institutions in the country. The Army maintained its power through intimidation and violence and was prone to random killings at the direction of its political masters, notably the Duvaliers (Papa Doc and Baby Doc). Political violence inspired by Aristide and targeted against the Army, was focused on Army enlisted men which lived in the same slum areas as most of the Haitian poor. A favorite technique of Aristide's political movement, *Lavalas* (deluge or waterfall in Creole), included the singling out of Haitian enlisted men and their families, in many cases burning entire families in their house.

Against this background, the Haitian military felt compelled to move, and they appeared to have been encouraged in their efforts by Haitian wealthy elites, who saw Aristide and his democratic, populist rule as a threat to their very existence. The coup on 29-30 September was initially run by the Haitian enlisted, who sought the legitimacy of a Haitian officer corps' blessing. During the coup, then EGEN

Cedras was held at gunpoint along with his family and threatened with harm if he did not back the coup. Predictably, Cedras sided with the coup plotters.

After Aristide was whisked out of the country on a Venezuelan C-130, U.S. and OAS reaction was swift. On 30 September 1991, the OAS convened an emergency session of the OAS Permanent Council and stated their desire to return democracy to Haiti.ⁱ By 4 October 1991, President Bush issued Executive Order 12775, which froze Haitian government assets in the U.S.ⁱⁱ Additionally, USCINCLANT as the warfighting-CINC with responsibility for Haiti, formed a Joint Task Force (JTF) commanded by BGEN Sutton, USMC at the direction of SECDEF. This JTF assembled in Camp Lejeune, North Carolina by 5 October 1991 with the mission of conducting a non-combatant evacuation (NEO) of U.S. citizens from Haiti, if the security situation deteriorated. Coincident with the formation of the JTF, the OAS sent a delegation to Port au Prince to commence negotiations with the de-facto Haitian government on the eventual return of Aristide to the Presidency. This initial OAS mission lasted from 4-7 October and ended when the Haitian military ceased negotiations and insisted that the OAS delegation leave Haiti. Notably, Assistant Secretary of State for Inter-American Affairs, Bernard Aronson was on the OAS delegation that was forced to leave Haiti. On 8 October, with the rejection of its delegation, the OAS called for a trade embargo against Haiti.ⁱⁱⁱ

Following the hasty departure of the OAS delegation from Port au Prince, the JTF assembled at Camp Lejeune was placed on heightened alert, fully expecting that a NEO would take place. At the time, the Port au Prince airport remained closed, leaving no immediately available exit for Americans that might desire to leave the country. The JTF remained at Lejeune for approximately two weeks and extensively planned for a NEO. One of the emerging fears that the JTF Commander had was that if a NEO were conducted, no matter how carefully crafted to be non-confrontational, the Haitian military might react to the operation, assuming it to be an invasion and U.S. intervention. In short, if U.S. forces were to enter Haiti to conduct a peaceful NEO, chaos and violence would likely result and the U.S. could find itself owning the country. At one point in the planning process, U.S. Army civil affairs experts were consulted, and stated that any operation in Haiti that involved a potential occupation, would be a long term proposition. Following two weeks at Lejeune, the JTF members were placed on 96-hour standby, and told to return to their home bases. This standby continued until February 1992, when the JTF was formally disbanded.

WHY BACK ARISTIDE?

One of the criticisms raised of the Bush policy toward Haiti, is that Aristide was not the best individual to back if we intended to foster democracy. Aristide had a chequered record and his advocacy of violent means to achieve his ends made him stand out as a less than "pure" figure. The question can be asked: why did we back him? I believe the context of the time needs to be understood. In August of 1991, the Soviets had experienced a coup attempt against the legitimate government of President

Gorbachev. Then Moscow Mayor Yeltsin's courageous stand, with U.S. encouragement had resulted in the continued movement toward reform and eventual democratization in what has become the Russian state. Our advocacy of standing up to the forces that sought to dismantle reform and democracy had raised the question: if it was the right policy for Russia, should it not be the right policy for Haiti? The U.S. State Department recognized that Aristide was a less than perfect representative of democracy. However, he was legitimately elected. To be consistent the U.S. needed to back him and efforts to restore his rule to Haiti. It is interesting to review the testimony of Assistant Secretary of State Aronson, made on 31 October 1991, before the House Subcommittee on the Western Hemisphere. In his testimony, Aronson reaffirmed U.S. overriding support for democracy in Haiti, based on U.S. principles, a freely elected president and the fact that the Haitians have never really had democracy since the nation was founded.²⁷ At the time of Aronson's testimony, President Bush had promulgated Executive Order 12779 (three days prior) which imposed a U.S.-sponsored trade embargo with Haiti on 5 November 1991. Notably, humanitarian supplies (food, clothing and medicine) were not effected by the embargo.²⁸ Additionally, at the time of Aronson's testimony, the great flow of Haitians fleeing Haiti had barely begun.

It can be argued that there were no major or vital national interests in Haiti. Political upheaval did not threaten our survival. This political upheaval, although close to the U.S., was a time-honored fact of life in Haiti. The difference in this case is that we saw a stand against the coup as an opportunity to promote our values. The migration of Haitians as a result of the political/economic upheaval does not appear to have been a major issue for consideration at the outset of the crisis.

THE MIGRATION AND THE EVOLUTION OF U.S. POLICY

Haitian illegal immigration was not a new problem facing the U.S. The Reagan administration had negotiated with the Haitian Government and in 1981 had instituted the Alien Migration Interdiction Operation (AMIO) by Executive Order 12324. This placed U.S. Coast Guard cutters in the Windward Passage between Haiti and Cuba with Immigration and Naturalization Service (INS) personnel onboard the cutters. The operation ran smoothly with Haitians intercepted by the Coast Guard being screened on the cutters by INS. Those Haitians requiring medical assistance or demonstrating valid cause for asylum, were placed ashore at the U.S. Naval Base at Guantanamo Bay (GTMO), Cuba. Valid asylum seekers were then transported to the U.S. for further processing and all those Haitians that did not demonstrate a valid cause for asylum were repatriated directly to Port au Prince. This operation was conducted with the full cooperation of the Haitian government and the International Red Cross, which supervised the repatriation process. This well ordered process had resulted in a total of over 24,000 Haitians interdicted attempting to migrate to the U.S. since 1981 with only 1% of that total being granted asylum.²⁹

Haitian migration after the September 1991 coup did not commence until late October with the first boatload of 19 Haitians being interdicted on 29 October. By 19 November 2,200 Haitians had been interdicted at sea. Most boats were no more than 40 feet long and many had more than 100 people onboard. Assistant Secretary of State for Inter-American Affairs Gelbard stated the U.S. policy on the Haitian migration before the House Subcommittee on International Law, Immigration and Refugees on 20 November 1991.

- Keep within the intent of the joint Haitian-U.S. Immigration Agreement (read AMIO). There was an obligation to stop the unimpeded flow of Haitian migrants from Haiti to the U.S.
- Rescue people from vessels that put them in danger of losing their lives.
- Ensure that those that have well-founded fear of persecution are identified and brought to the U.S.
- Avoid any action that would encourage more Haitians risking their lives and taking to the high seas.^{vii}

Complicating U.S. policy was the fact that the U.S. District Court of Southern Florida had issued a temporary restraining order (TRO) on 19 November 1991 halting Haitian repatriations initially from 20 November-17 December 1991. This restraining order was issued on behalf of the Haitian Refugee Center in Miami, a special interest group advocating human rights protection for the Haitians fleeing Haiti.^{viii} This TRO was made in response to the first repatriation of Haitians back to Port au Prince on 18 November 1991, where 538 Haitians were repatriated and an additional 55 that had "screened-in" had been brought to Miami.^{ix} The involvement of the judicial branch of the U.S. government, at the U.S. District Court level, which included a number of extensions to the initial TRO, would set the scene for an increased flow of Haitians leaving the country, perceiving there was a window of opportunity to reach the U.S.

The evolution of policy is interesting to track. In the Executive Branch, the National Security Council (NSC) commenced meeting on Haiti from the beginning of the crisis. This devolved to a once weekly meeting of the Policy Coordinating Committee (PCC), chaired by Ambassador Gelbard of State. Initially, the focus on Haiti was confined to the stated policy goal of restoring Aristide to the Presidency. Following the failed OAS mission to Haiti in early October both the OAS and the U.S. imposed an embargo on most trade with Haiti. Although it appears that an increased flow of Haitians fleeing the country was considered, it was discounted as being inconsequential. Additionally, State was of the opinion that the crisis would not last long and the de-facto Haitian regime would cave in to international pressure. Initial focus also centered on Treasury, and Customs which became the lead agencies for the freezing of Haitian assets in the U.S. and the imposition of an embargo.^x These two assumptions proved to be drastically wrong. The de-facto regime had no intention of letting Aristide back in the country in the near term, and were motivated by fear that Aristide's Lavalas supporters would enact retribution on

the Haitian Army and coup plotters. This remained a sticking point in any negotiations on restoration of democracy to the country. Additionally, the assumption that Haitians would not flee their country in large numbers was seriously misplaced. It can be argued that the U.S. policy on Haitian migration was quickly steered by events out of control of the NSC (TRO issued by U.S. District Court in Miami, media attention, high screen-in rate by INS agents), however, it can equally be said that our humanitarian motivations which were originally geared toward saving life became a magnet for Haitian refugees as the TRO eliminated the ability to involuntarily repatriate Haitians.

Initial efforts by the USCG (working under the 1981 AMIO auspices) were quickly overwhelmed. Haitians were putting to sea in vessels that were barely seaworthy, stocked with limited supplies and under crowded conditions. There was a real danger that if we did not act boats would sink in the Windward Passage with massive loss of life. Initially, State attempted to foster a regional solution to the migration. Twenty-five Western Hemisphere countries were contacted starting on 8 November 1991 as the migration began to gather steam, in the hope that these countries would accept Haitians. Only four countries agreed to accept the Haitians and none would take more than 250. After an initial repatriation of 538 Haitians on 18 November and the issuance of a temporary restraining order on 19 November, a Haitian migrant camp had to be opened at GTMO on 21 November.^{xx} This would prove to be the ultimate magnet for the Haitians.

A series of events now transpired to draw more Haitians to GTMO. INS screeners that initially arrived were relatively inexperienced. Additionally, many lacked linguistic capabilities in Creole. Translators were hired from the local Haitian community in Miami and New York to assist INS in GTMO. In many cases these translators embellished stories of Haitians seeking to prove they had a legitimate fear of persecution. INS was also under pressure to ensure that any Haitian showing a legitimate need for asylum would be screened-in and brought to the U.S. As a result two things happened: screened-in rates skyrocketed and approached 30% of all Haitians interdicted and Haitians learned the "right stories" that would allow them to successfully screen.^{xxi} This was especially apparent when Haitians that were screened-in arrived in Miami. These individuals were generally released within the general population and instructed to come back within 30 days for an initial processing on their asylum request (generally 90% never showed up for follow on visits). As they were released, they communicated back with relatives still in Haiti. Passing on the "right story" would then encourage more migrants to leave Haiti, seeking the potential of economic opportunity in the U.S. In some cases, entire villages departed Haiti and reached GTMO.

By late November 1991, the focus of U.S. efforts changed. State still favored a policy of the restoration of Aristide to the Presidency. At the same time the migrant question became an overriding concern. Ambassador Gelbard stated that the surge in migration appeared to be motivated by economic reasons, because the surge had begun more than a month after Aristide was deposed from power.^{xxii} A JTF had been established at GTMO to handle the migrant camps. A ceiling of 12,500 migrants was

placed on the camp due to health concerns, primarily because raw sewage from the Haitians (which was placed in the dump at the North end of the base) began leaching into Guantanamo Bay. Under ordinary circumstances, this would not be a concern, however, since Castro allowed no water to be shipped in to the base, all water consumed on the Base came from a desalinization plant which drew from Guantanamo Bay. The bacteria count in the Bay was monitored daily.

Following a lull in migration over the Christmas/New Year's holidays (due primarily to bad weather), Haitian migration began again in earnest in mid-January 1992. Without the ability to conduct involuntary repatriations, the JTF at GTMO was restricted to seeking volunteers to return to Haiti (by 1 February 1992, 944 Haitians had voluntarily returned to Port au Prince), and bringing screened-in Haitians to the U.S. (1400 screened-in Haitians were brought to the U.S. during the same timeframe)^{xvi}. The U.S. Supreme Court provided breathing space by ruling on 31 January 1992 that the U.S. operation of involuntarily repatriating Haitians to Haiti was within the guidelines of U.S. and international law, thereby overturning the 19 November TRO and allowing involuntary repatriations to commence.^{xvii}

The U.S. diplomatic line was also hardening with respect to the return of President Aristide. Ambassador Einaudi (the U.S. Permanent Representative to the OAS) stated on 21 January that the U.S. and OAS shared the philosophy that coups were not an acceptable way to settle political differences and that we were committed to a negotiated settlement of the crisis. He also stated that a return to "status quo ante" was not acceptable and that following a return to democracy, the U.S. and OAS would commence addressing the long-festering needs of the Haitian people.^{xviii} Einaudi was publicly setting the framework for the Washington Accords, where Haitian legislators met with Aristide in Washington and agreed on a framework that would restore democracy to Haiti. This took place in late February 1992, but the Haitian legislature refused to ratify the accord and the agreement fell apart in March.^{xix} The failure of the accords may have been one factor in causing the final surge of Haitian migration. Many Haitians that were interdicted during the April-May timeframe indicated that they despaired that since Aristide would not be returning, their situation would not improve.

The U.S. policy was also being altered in response to pressure from U.S. manufacturers who ran "assembly plants" in Haiti. These plants had been shut down 30 days after the imposition of the 5 November 1991 embargo. Assembly plants imported parts of nearly completed manufactured goods to Haiti, and then made the final assembly of the product in Haiti. Bowing to pressure from manufacturers and in a hope of improving Haitian unemployment, on 4 February 1992, the embargo was modified allowing U.S. assembly plants to continue to operate in Haiti, provided no taxes or licensing fees were paid to the de-facto government.^{xx} It was estimated that the embargo had caused a rise in Haitian unemployment by the loss of 144,000 jobs, of which 24,000 were from U.S. owned assembly plants. By loosening the embargo with respect to the U.S. owned plants, the hope was that up to 250,000 Haitians would be effected (estimates were that each job supported up to six Haitians).^{xxi} Additionally, it was a recognition by U.S. policy makers that as the embargo appeared to have an effect in motivating people to

flee Haiti, trying to improve living conditions of those most likely to depart might alleviate the surge of migration

Congress also began to show more interest in the migration policy, holding hearings in late February. Deputy Assistant Secretary of State for Caribbean and Mexican Affairs Donna Hrinak, testified before the House Subcommittee on the Western Hemisphere and defended the U.S. policy on 19 February 1992. She stated for the first time publicly, that the situation in Haiti would not be turned around by quick or easy solutions (at odds with the initial State assumption that the crisis could be over within weeks). She also stated that U.S. law did not guarantee that any citizen of a country that experiences violence or turmoil is automatically granted asylum^{xx}. The House remained unconvinced that U.S. policy was wise and on 27 February passed HR3844, which would suspend repatriation of Haitians for six months^{xxi}. Although this legislation was never approved in the Senate, it was widely reported in the press and provided the impression, to the Haitians, that if the repatriations had not been officially suspended, it would be shortly. This only added to motivations for what became the final surge in Haitian migration during the Bush Administration.

Weather in the Caribbean improved in April and set the stage for a mass migration from Haiti that resulted in the President signing the final Executive Order on Haitian migration, which allowed for direct repatriation of Haitians to Haiti without the benefit of any INS screening process. In April the USCG interdicted 79 boats with 6,158 Haitians. In May, 152 boats with 13,103 Haitians were interdicted. On 21 May, the USCG announced that they would only interdict unseaworthy craft, as there was no room remaining on USCG cutters to pick up Haitians^{xxii}.

Motivation for the increased migration included worsening economic conditions in the country (the embargo had been in place since 5 November 1991), failure to reach a political solution allowing for the re-establishment of democracy (contributing to despair), Congressional action advocating a six month hiatus on repatriation, and good weather. The surge quickly brought the migration issue to a culminating point as the camps at GTMO were reaching capacity. The PCC considered three options to solve the crisis. They included: find a third country willing to take the Haitians (up to 25,000) with the U.S. funding the camp, interdict boats within Haitian waters to have a greater deterring effect (this was rejected as it was a violation of Haitian sovereignty and would require Aristide's permission), and finally, conduct direct repatriation without INS screening, while at the same time establishing an in-country Refugee Processing Center (RPC). Serious consideration was given to military intervention in the event the Haitian de-facto government did not cooperate with U.S. efforts at repatriation^{xxiii}.

President Bush signed Executive Order 12807 on 24 May 1992. This followed the PCC's recommendation on direct repatriation. Press statements issued by the White House characterized the need to protect the lives of Haitians at sea. Additionally, the opening of an RPC in Port au Prince was seen as an effort to allow Haitians, legitimately seeking asylum to have an avenue to do so^{xxiv}. Congressional reaction was swift. A statement issued on the same day the Executive Order was signed

blasted the White House and threatened to overturn the order. Congressman Rangel (D-NY) was particularly vocal stating, "this is an election year and you don't want poor black folks coming home."^{xxx} Despite the rhetoric and emotion of the moment, Congress was unable to pass legislation that would overturn the Executive Order. In July the New York District Federal Court of Appeals suspended repatriation. This was quickly acted on by the U.S. Supreme Court, which suspended the Appeals Court ruling and set a March 1993 hearing to determine the legality of the policy.^{xxvi}

From 24-31 May, 21 boats were interdicted with 2,492 Haitians onboard. By contrast, once news got out on the new U.S. policy, migration slowed to a trickle with only 7 boats and 366 Haitians being picked up in June.^{xxvii} The crisis of Haitian migration had been averted for the remainder of the Bush tenure, despite criticism from Haitian human rights groups, the media and Congress. The Bush Administration's policy on Haiti remained strong in its rhetorical support for the return of democracy.

CONCLUSION:

A major crisis had been averted with the issuance of the May 24, 1992 Executive Order. The evolution of the policy that led to this point was slow and at times ponderous. The policy was initially hampered by the twin assumptions made at the outset: the crisis would be short-lived (the de-facto regime would cave to pressure) and few Haitians would flee their country. The fact that the USCG had been actively interdicting Haitians at sea since 1981 was also a factor. There was a mechanism in place to handle Haitian migration, yet not in the numbers seen in November 1991. When the USCG became overwhelmed and a regional solution could not be found (find a foreign destination for the Haitians), GTMO became the logical answer. The establishment of camps at GTMO provided time for the Administration to calculate its next move. It is interesting to note that Department of Justice lawyers stated early on in the crisis that the U.S. Naval Base at GTMO was considered U.S. leased but not U.S. owned territory. As such, Haitians arriving there were not afforded the same legal rights as if they had reached the U.S. (expediting any screening process for refugee asylum). GTMO was not opened to the Haitians willingly. At the time, the Department of Defense (DOD) was adamant in insisting that the migrant problem was not a DOD concern. It was a non-traditional role for the military and as such, was resisted. Additionally, the fear was that once camps opened in GTMO, it would become a DOD problem (you touched it, you got it). It was only after the Federal District Court of Miami issued its TRO, USCG cutters were filled to capacity and the lack of a regional safe haven was established, that the camps were established. The only option other than camps in GTMO would have been to transport Haitians to the U.S. With visions of the Mariel boatlift fiasco of the Carter Administration in mind, transferring Haitians to the U.S. was the least desirable option.

Congressional interest remained intent throughout the crisis. Hearings were held for State Department officials to explain the Administration policy. It was not until February 1992 that the House became organized enough to pass legislation that called for a six month hiatus in forced repatriations.

This legislation was never passed by the Senate and as a result died. Congressional critics included the Black Caucus. Congressman Rangel (D-NY) was extremely vocal over what he saw as a racist policy that denied asylum to Haitians yet allowed Cubans to enter the U.S. (even though most Cubans were fleeing Communist Cuba for the same reason as the Haitians—poor economic conditions).

The Judiciary became involved through the filing of petitions by Haitian human rights groups. The judicial system and the media were the two most responsive avenues for advocacy of the Haitian special interest groups, and their efforts threatened at the outset to derail the Bush Administration's migrant policy. If their efforts had succeeded, the flow of migrants into the U.S. would have been virtually impossible to stop or manage. Two Supreme Court decisions (the first lifting the November 1991 TRO, and the second allowing the repatriation to continue with a final hearing scheduled for March 1993 on the policy) allowed the Bush policy on Haitian migration to remain on track.

In summary the policy process was evolutionary. It did not work as a well-oiled machine, but was cautious in its approach to the migrant problem, while at the same time advocating the return of democracy to Haiti. It has to be judged as a success. It essentially deferred the question of Haitian immigration until after the November 1992 election (ironically President Clinton, who as a candidate had criticized the policy, decided to continue it).

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- ^{xxiv} Bush, "Executive Order 12807-Interdiction of Illegal Aliens, May 24, 1992," Weekly Compilation of Presidential Documents - June 1, 1992, Washington. D C , Vol 28, No 22, 923-4
- ^{xxv} Pamela Fessler, "Members Decry Haiti Policy, Vow To Seek Change," Congressional Quarterly, Washington D C , May 30, 1992, 1547
- ^{xxvi} Hayes, 84
- ^{xxvii} *Ibid*, 83